**Children's Hospital of San Francisco; California Pacific Medical Center *and* California Nurses Association.** Case 20–CA–24067

September 30, 1993

## DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On April 6, 1993, Administrative Law Judge Burton Litvack issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt his recommended Order.

In finding that the registered nurses at the former Children's Hospital (renamed as the Respondent's California campus) constitute an appropriate bargaining unit, the judge relied on, among other factors, a long bargaining history between Children's and California Nurses Association (the Union). In its brief to the Board, the Respondent, citing to General Counsel's Exhibit 2, a 1988–1991 collective-bargaining agreement, argues that the exhibit shows that the nurses at Children's Hospital had always been part of a multiemployer bargaining unit consisting of many of the major hospitals in San Francisco and Daly City. It contends that the judge's reliance on bargaining history was therefore improper and amounts to a fatal flaw in the judge's unit finding. We disagree.

The judge's reliance on bargaining history was not erroneous. The 1988–1991 agreement on which the Respondent relies shows merely that Children's Hospital had engaged in joint negotiations with other hospitals immediately preceding the execution of that contract. Whether bargaining before 1988 was on the same basis is not established. Moreover, whatever Children's Hospital's relationship to those other employers, the fact remains that for more than 40 years Children's Hospital had a single facility employing registered nurses, and it dealt continuously with the Union as the representative of those nurses in that facility.[2] That long term relationship was reasonably relied on by the judge in finding that—where the proffered unit choices are a unit consisting of the facility in which the bargaining relationship had existed and a unit encompassing that facility and another which lacked a similar bargaining history—the single facility is an appropriate unit.

Furthermore, even without reliance on bargaining history, we can affirm the judge's finding that a unit of registered nurses limited to those working at the former Children's Hospital facility is appropriate. The finding is justified on the basis of other significant factors described by the judge, particularly the lack of significant interchange between nurses on the two campuses, the lack of functional integration between what are essentially two full service acute care medical facilities, and the absence of record evidence of any potential for undue adverse consequences resulting from a labor dispute in this unit.

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Children's Hospital of San Francisco and California Pacific Medical Center, San Francisco, California, shall take the action set forth in the Order.

*Jonathan J. Seagle, Esq.*, for the General Counsel.
*Gerald R. Lucy, Esq.* and *Tracy Leston Gerston, Esq. (Corbett & Cane)*, of Emeryville, California, for the Respondent.
*Duane B. Beeson, Esq. (Beeson, Tayer & Bodine)*, of San Francisco, California, for the Charging Party.

## DECISION

### STATEMENT OF THE CASE

BURTON LITVACK, Administrative Law Judge. The trial, in the above-captioned matter, was held before me on April 22 through 25, 1992, in San Francisco, California. Based on an unfair labor practice charge, filed by the California Nurses Association (CNA), on June 17, 1991,[1] the underlying complaint was issued by the Regional Director for Region 20 of the National Labor Relations Board (the Board), on January 16, 1992, alleging that Children's Hospital of San Francisco (Children's Hospital), and California Pacific Medical Center (Respondent), engaged in conduct violative of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). Respondent timely filed an answer, denying the commission of the alleged unfair labor practices and raising certain affirmative defenses. At the trial, all parties were afforded the opportunity to present, examine and cross-examine witnesses, to offer into the record any relevant evidence, to orally argue their respective legal positions, and to file posthearing briefs. Such documents were filed by counsel for the General Counsel and by counsel for Respondent, and each has been carefully considered by me. Accordingly, based upon the entire record herein, including the posthearing briefs and my conclusions as to the testimonial demeanor of the several witnesses, I make the following

[1] Member Devaney notes that there are no exceptions to the judge's finding that the Respondent did not violate Sec. 8(a)(5) by failing and refusing to provide the 1990 and 1991 budget documents requested by the Union.

[2] In keeping with that history, when the 1988–1991 agreement expired, Children's entered negotiations with the Union for an agreement covering solely its own nurses at the facility now known as the Respondent's California campus.

[1] Unless otherwise stated herein, all events occurred during 1991.

## FINDINGS OF FACT

### I. JURISDICTION

Respondent admits that, at all times material herein prior to June 16, 1991, Children's Hospital, a corporation, with its office and place of business in San Francisco, California, was engaged in the operation of a hospital in said city and that, during calendar year 1990, in the course and conduct of its business operations, Children's Hospital derived gross revenues in excess of $250,000 and purchased and received goods and materials, valued in excess of $5000, directly from suppliers located outside the State of California. Respondent also admits that, at all times material herein prior to June 16, 1991, Pacific Presbyterian Medical Center, Inc. (Pacific Presbyterian), a corporation, with its office and place of business in San Francisco, California, was engaged in the operation of a hospital in said city and that, during calendar year 1990, in the course and conduct of its business operations, Pacific Presbyterian derived gross revenues in excess of $250,000 and purchased and received goods and materials, valued in excess of $5000, directly from suppliers located outside the State of California. Next, Respondent admits that, since June 16, 1991, it has been a corporation, with an office and places of business in San Francisco, California, and has been engaged in the operation of a hospital, consisting of the former Children's Hospital and Pacific Presbyterian facilities, in said city and that, during the period from June 16 to December 31, 1991, in the course and conduct of its business operations, it derived gross revenues in excess of $250,000 and purchased and received goods and materials, valued in excess of $5000, directly from suppliers located outside the State of California. Finally, Respondent admits that, at all times prior to June 6, 1991, Children's Hospital and Pacific Presbyterian were, and each was, engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and each was a health care institution within the meaning of Section 2(14) of the Act and that, at all times since June 16, 1991, it has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and has been a health care institution within the meaning of Section 2(14) of the Act.

### II. LABOR ORGANIZATION

Respondent admits that, at all times material herein, CNA has been a labor organization within the meaning of Section 2(5) of the Act.

### III. ISSUES

The complaint alleges that, since June 16, 1991, in the alternative, Respondent has been a successor to Children's Hospital as a result of a merger between the latter and Pacific Presbyterian or, having acquired the business of Children's Hospital, Respondent has continued to operate the latter's business in a basically unchanged form and that, in either circumstance, as CNA had been the collective-bargaining representatives of the registered nurses employed by Children's Hospital for over 40 years and as the former Children's Hospital registered nurses form a separate appropriate unit, Respondent has had a continuing obligation to recognize and bargain with CNA as the bargaining representative of said employees. Accordingly, the complaint alleges that Respondent engaged in conduct violative of Section 8(a)(1) and (5) of the Act by withdrawing recognition from CNA as the bargaining representative of the former Children's Hospital registered nurses and by unilaterally, without offering to bargain with CNA, changing their terms and conditions of employment. Asserting that neither a stock transfer or successorship situation exists herein and that the only appropriate unit herein is one encompassing the former Children's Hospital and the former Pacific Presbyterian registered nurses, Respondent denies that, as a matter of law, it has been under any legal obligation to recognize and bargain with CNA as the bargaining representative of the former Children's Hospital registered nurses. The complaint also alleges that, prior to June 16, 1991, Children's Hospital engaged in conduct violative of Section 8(a)(1) and (5) of the Act by failing and refusing to bargain over the effects of the merger with Pacific Presbyterian and by failing and refusing to provide information, which was necessary and relevant to collective bargaining, to CNA. Respondent denied the commission of the alleged unfair labor practices.

### IV. THE ALLEGED UNFAIR LABOR PRACTICES

#### A. *The Facts*

The record establishes that, for several decades, Children's Hospital operated an acute care medical facility in San Francisco; that since at least 1947, the approximately 585 staff registered nurses, who worked for Children's Hospital, were represented for purposes of collective bargaining by CNA; and that the most recent collective-bargaining agreement, to which the parties were bound,[2] expired on May 31, 1991. The record further establishes that, located approximately a mile from Children's Hospital, Pacific Presbyterian also operated an acute care medical facility for many years;[3] that, for at least 15 years prior to July 1990, the two hospitals held ''off and on'' discussions regarding the possibility of merging; and that said talks intensified through the first half of 1990; and that, on July 10, 1990, a merger agreement was entered into by California Healthcare System, the parent corporation of Pacific Presbyterian, and Northern California Health Center, the parent corporation of Children's Hospital. However, said agreement represented only the start of the merger process and, prior to ultimate consummation, not only was it necessary to obtain consent for the merger from the California Attorney General but also, given the size of the merger partners, consent was required from both the United States Department of Justice and the Federal Trade Commission. Obtaining approval from the latter agency proved to be a lengthy and complex matter, continuing into the spring 1991.

Having been informed by the president and chief executive officer of Northern California Health Center of the merger agreement on the day after such was executed by the parties but concerned about the effect of the proposed merger on the collective-bargaining relationship between Children's Hospital and CNA, on September 19, 1990, Hedy Dumpel, the

[2] The collective-bargaining agreement actually was between CNA and a group of San Francisco area hospitals, called the ''affiliated hospitals,'' of which Children's Hospital was a member.

[3] Pacific Presbyterian's approximately 800 registered nurses were not represented by any labor organization for purposes of collective bargaining.

director of the economic and general welfare program for CNA, wrote a letter to the former, stating a need for ''complete information concerning the nature of the merger,'' including the identity of the organizations involved and the nature of the transaction, and requesting a ''review'' of the merger agreement as the best source for the above information. As CNA had obtained substantial information regarding the proposed merger but had not, as yet, been provided with a copy of the proposed merger agreement and as there had been a recent reduction of staff despite assurances that the merger would not result in such action, Willard Hatch, the then temporary assistant director of CNA's economic and general welfare program, wrote a letter, dated January 31, 1991, to Laurence Arnold, the attorney for Children's Hospital, in which he reiterated the September 19 request for a copy of the ''consolidation agreement'' because ''CNA believes that there is reasonable cause to believe that the Nurses represented at Children's Hospital could be adversely impacted depending upon the nature of the consolidation and the parent organizations [sic] intentions and actions.'' Five days later, in a letter dated February 5, Arnold wrote to Hatch that, as the consolidation had not yet been approved and as the merger agreement constituted ''confidential'' and ''proprietary'' information, his information request was ''both premature and legally unfounded.'' Therefore, according to Arnold, Children's Hospital believed it unnecessary to provide the requested information to CNA, and there is no evidence that the requested information was ever provided to CNA.

While approval of the proposed merger between Children's Hospital and Pacific Presbyterian was pending before the Federal Trade Commission, in early 1991, CNA commenced separate negotiations with each of the former members of the ''affiliated hospitals'' group for a successor collective-bargaining agreement.[4] Prior to the start of negotiations with Children's Hospital, Lois Roth, a labor representative for CNA, sent a letter, dated March 19, to Richard Harrington, the hospital's chief executive officer, requesting the following information: the hospital's 1990 and 1991 budgets, 1989 and 1990 IRS 990 forms, the total current bargaining unit payroll costs, the total bargaining unit fringe benefit costs, and the total cost of registry RN's for 1990. In response, Laurence Arnold sent a letter, dated March 25, to Roth in which he agreed to provide all the requested information except the 1990 and 1991 budgets. Children's Hospital never provided the budget information to CNA, and Roth explained that said information was necessary so that CNA could get ''an overall picture of hospital finances'' in order to prepare for bargaining.

Willard Hatch testified that the initial 1991 negotiating session[5] between CNA and Children's Hospital occurred on April 30 at the Sheraton Fisherman's Wharf hotel with the hospital's chief spokesperson being Arnold and CNA's chief spokesperson being him. According to Hatch, the subject of the merger arose in two contexts. As the meeting began, CNA presented proposals for the successor contract between the parties, including a 2-year term and a ''successors, mergers, and assigns'' provision. The latter would have bound the hospital to the terms of the collective-bargaining agreement ''notwithstanding any sale, merger, consolidation or other transfer of the Employer to or with any other entity or entities.'' Hatch testified that, with regard to the latter language, Arnold said ''that they were not going to negotiate that language.'' Further, according to Hatch, later in the session, he inquired as to whether Arnold was going to respond to CNA's prior information requests, ''and Mr. Arnold said that they were not prepared to negotiate over the effects of the merger until it actually took place. And so . . . there would be no information at that point. Neither would there be any bargaining over it.'' During cross-examination, Hatch offered a significantly different version of this exchange, stating that he referred to CNA's past correspondence and asked if the hospital would give the information to the former and that Arnold replied ''the hospital . . . was not going to negotiate over the matter of the merger until it took place,'' and, as the Federal Trade Commission had not yet ruled on the merger, there was ''no final approval'' for it. Ultimately, the Federal Trade Commission indicated its assent for the merger on May 22, and, according to Hatch, at a bargaining session the next day, during discussion of the proposed successor, merger, and assigns provision, Arnold said that ''the only thing that he was authorized to negotiate was an extension of the agreement.''[6] Finally, Hatch stated that CNA's position, with regard to the contract term never changed during the bargaining—it desired a 2-year contract. However, faced with the approval of the merger by all governmental agencies, CNA ultimately reached agreement with the hospital that the expired contract would remain in effect on a day-to-day basis until the point of merger, an agreed-upon termination date, or CNA gave a 10-day strike notice.[7]

Respondent presented two witnesses with regard to the bargaining, Harry Joel and Laurence Arnold. Joel, who is currently Respondent's vice president for human resources and worked in that same position for Children's Hospital prior to the merger, testified that he attended each of the negotiating sessions; that CNA's contract proposal contained a successorship and merger provision; and that Arnold said, with regard to it, he was present to bargain on behalf of Children's Hospital and no other entity and ''we . . . were not authorized to bargain on behalf of what may become . . . a new entity with a pending merger.'' Joel then specifically denied that Hatch ever requested to bargain over the effects of the merger at this or any later negotiating session. Attorney Arnold testified that, at the initial bargaining session, he did inform CNA's representatives that he was there ''to negotiate a contract for Children's Hospital and Chil-

[4] Willard Hatch testified that the group ''broke up'' prior to the start of the 1991 negotiations and that each hospital indicated that it would bargain thereafter on an individual basis.

[5] The dates of the bargaining sessions, between CNA and Children's Hospital, were April 30, May 7, 14, 17, 23, and 29, and June 11.

[6] Hatch recalled this statement ''vividly'' as he had never previously heard such a comment during negotiations.

[7] Counsel for the General Counsel offered the testimony of Lois Roth, who attended each of the bargaining sessions, as corroboration for that of Hatch. However, contrary to the latter, Roth recalled that, during the initial bargaining session on April 30, Hatch specifically said ''that we wanted to have discussions over the effects of the merger'' and that Arnold replied ''the hospital . . . would not . . . bargain over the effects of the merger, because it had not occurred at that point and he did not have the authority to do so.'' Roth added that the proposed successor and merger language remained ''on the table'' throughout the bargaining.

dren's Hospital only;'' there were not many questions concerning CNA's proposed merger language as it was ''self-explanatory''; and no CNA representative either reiterated a previous request for information or requested that he bargain over the effects of the pending merger. On the latter point, Arnold stated that, at all times, CNA wanted an agreement which would span the merger and ''that sort of obviated the need for effects bargaining.'' He added that he was ''positive'' about this, for CNA demanded ''an entire contract,'' with a duration of 2 years. Continuing, Arnold testified that this position never changed even after he advised CNA, on May 23, that the merger had been approved.

Notwithstanding that the Federal Trade Commission had not yet given its assent to the merger, the record evidence establishes that, commencing in the fall 1990, Children's Hospital and Pacific Presbyterian began detailed planning for the operation of the consolidated medical center, with all the vice presidents from each hospital participating. Thus, Joel and his counterpart at Pacific Presbyterian were charged with developing employee policies and procedures for the merged entity and, ultimately, drafting a new employee handbook. Joel testified that, in this regard, they used the existing policies and procedures manuals for both hospitals and that ''we tried to pick what we felt were the best policies and integrate them where we could.'' Penny Holland, who is Respondent's vice president for nursing and who held the same position for Children's Hospital, and her counterpart at Pacific Presbyterian were instructed to plan for the consolidation of the nursing departments and specifically to develop manuals dealing with standards of practice, administrative procedures, and the clinical policies and procedures. In this regard, Paula Quinn, the associate director of nursing for clinical services for Children's Hospital and the director of nursing for maternal and child services for Respondent, along with her counterpart for Pacific Presbyterian, was given responsibility for coordinating the drafting of the aforementioned clinical standards and procedures manual for the combined hospital, with said manual describing the delivery of nursing care practices for the department of nursing. Further, Kevin Coss, the vice president for facilities management for Children's Hospital and the vice president for operations support for Respondent, and the vice president for facilities management for Pacific Presbyterian were assigned responsibility for developing a plan for combining the services of both hospitals with a view toward a ''potential savings in facility dollars.'' The record further discloses that, on June 1, 9 days after the Federal Trade Commission gave its assent for the merger, the 12 individuals, who were chosen to be vice presidents in charge of the merged entity's operating divisions, were notified of their selections and that their consolidation plans were completed by the effective date of the merger, 2 weeks later.

As stated above, the Federal Trade Commission gave its assent for the merger on May 22, and, on June 16, James Heimarck and William R. Bremer, on behalf of Children's Hospital, and G. Aubrey Serfling and Fred Drexler, on behalf of Pacific Presbyterian, entered into the formal agreement of merger. With regard to the transaction underlying the so-called merger of the two hospitals, Gale Mondry, presently the senior vice president for legal services for Respondent and, previously, the legal counsel for Pacific Presbyterian, testified that the transaction between Children's Hospital and Pacific Presbyterian ''was not a takeover or a purchase'' but rather ''a 50–50 merger . . . [with]. [T]he assets of [both] . . . merged together . . . and a new entity [being] constituted.'' Mondry continued, stating that the transaction was accomplished pursuant to the California Nonprofit Corporations Code with the drafting of new bylaws, the appointing of new officers, the resignation of the two hospitals' boards of directors, and the appointing of a new 23-member board of directors consisting of 11 former board members from each hospital and the new chief executive officer, G. Aubrey Serfling. However, contrary to Mondry, close scrutiny of the June 16 merger agreement document reveals a far different picture of the transaction. Thus, rather than creating a new entity, the first paragraph of said agreement states that Pacific Presbyterian ''shall be merged into'' Children's Hospital; that Children's Hospital ''shall be the surviving corporation,'' and that such constitutes ''the merger.'' Next, the agreement provides that, upon the merger, the articles of incorporation of Children's Hospital will be amended to change the corporate name to that of Respondent, California Pacific Medical Center. Finally, the fifth paragraph of the agreement states that, upon the merger, Pacific Presbyterian shall no longer exist as a separate entity and that Respondent, formerly known as Children's Hospital, ''shall succeed, without other transfer, to all rights and property of [Pacific Presbyterian] and shall be subject to all the debts and liabilities thereof in the same manner as if California Pacific Medical Center had itself incurred them.'' Elaborating upon the plain language of the hospitals' agreement, Mondry averred that the ''prime'' reason for the retention of the Children's Hospital corporate ''shell'' was that it ''already had a 501 (c)(3) exemption ruling from the Internal Revenue Service,'' essentially ensuring that ''we were a charitable organization and [contributions] . . . would be tax-exempt.'' As another reason for the structuring of the agreement, Mondry added that Children's Hospital already had an identification number for Medicare purposes. As a final reason for structuring the transaction as they did, Mondry explained that the parties wanted ''another entity'' to be between the parent and merged entity and Children's Hospital already had such a corporate structure.

There can be no question that, upon execution of the June 16 merger document, Respondent undertook immediate steps to implement the transaction and to consolidate operations of the two hospitals. Thus, besides renaming the buildings, which comprised the former Children's Hospital its California campus and the former Pacific Presbyterian facilities its Pacific campus,[8] Respondent immediately centralized all management, educational, purchasing and distribution, and administrative functions pursuant to the planning described above; commenced operating shuttle carrier between the campuses and replacing all signs with ones bearing the new name; began utilizing stationery, business forms, and business cards with the California Pacific Medical Center logo, one payroll system and checks with Respondent's logo, the

[8] As a result of the consolidation, Respondent is comprised of 60 buildings; however, notwithstanding the combining of the two hospitals under the name California Pacific Medical Center, there is no dispute that each of the two campuses remains a fully equipped acute care hospital and that, as such, despite some specialized areas, the two campuses offer mostly duplicate services to the public. Although Respondent apparently has future plans to change this, such has not yet been accomplished.

same job classifications and identification badges, one mailing address, and advertisements which referred to Respondent rather than a particular campus; mandated that employees wear ''coordinated'' uniforms; gave physicians reciprocal admitting privileges at both campuses; and enforced common labor relations policies and practices, applicable to employees on both campuses except those covered by collective-bargaining agreements.[9] In the latter regard, Respondent's employee handbook, which explains Respondent's labor relations policies and practices, was completed prior to the merger and distributed to all of Respondent's employees ''shortly after'' June 16. Further, except where in conflict with collective-bargaining agreements, Respondent immediately implemented the same employee benefit plans, including health plan choices, a disability plan, a dependent care plan, a paid time off and extended illness plan, a pension plan, and a supplemental tax annuity plan. In addition, within days of the merger, Respondent began selecting department heads, with approximately 100 being selected by September 4. Finally, Respondent developed a job posting system whereby all available positions for the entire medical center were posted in several locations on both campuses and employees on both campuses were eligible to apply and centralized all training, education, and new employee orientation functions.

On the same day as Pacific Presbyterian merged into Children's Hospital, with the latter renaming itself with that of Respondent, the latter's new president and chief executive officer Sperling sent the following letter, dated June 16, to CNA:

> In July 1990, you were advised by [Children's Hospital] that they were engaged in merger discussions with [Pacific Presbyterian]. On May 22, 1991, the [FTC] decided that the merger should not be challenged. Since that time, a number of other conditions of merger has [sic] been resolved. Effective today, these two organizations have been merged into a single, combined organization. As of today, the professional nursing staff[s] . . . are a single, integrated work force with common leadership, policies, procedures, pay, employee relations, etc. This consolidation, we believe, is in the best interest of our patients, the community and, most of all, our professional nurses. Since the combined work force is composed of 838 former [Pacific Presbyterian] non-[represented] nurses and 589 former [Children's Hospital] represented nurses, the clear majority of the professional nurses have not selected union representation. The new organization is legally prohibited from recognizing CNA as the representative of all the RN's and imposing a union on the majority. We, therefore, have no alternative but to withdraw recognition of the CNA as the representative of any RN's at California Pacific Medical Center.
>
> It is our strong feeling, however, that the question of whether or not professional nurses desire representation should be the decision of the nurses themselves. We invite you to join with us and request the National Labor Relations Board to conduct a secret ballot election of all registered staff nurses.

On the next day, June 17, Respondent filed an RM petition for an election in a unit encompassing registered nurses on both campuses, with said proceeding being blocked by the instant unfair labor practice charge.

There is no dispute that, upon the merger, Respondent continued to employ all the former Children's Hospital registered nurses in their same positions at the California campus as before the merger; that none were required to file new employment applications or interview for their jobs; and that, upon the merger, in accord with its policy of having a ''unified hospital'' and an ''integrated workforce'' and equalizing the benefits for employees in the same job classifications on both campuses, Respondent implemented changes in the benefits available to all its registered nurses on both campuses and, increased the wage rates of the former Children's Hospital registered nurses. There is also no dispute herein that, having withdrawn recognition from CNA as the bargaining representative of the former Children's Hospital registered nurses, Respondent implemented the aforementioned changes in their terms and conditions of employment unilaterally and without notifying and offering CNA an opportunity to bargain over said changes and that said changes were set forth in the aforementioned employee handbook and in an enclosure to a letter, dated June 16 and signed by chief executive officer Serfling, which was disseminated to all registered nurses on both campuses.[10] Comparison of the terms and conditions of employment set forth in the expired collective-bargaining agreement, between CNA and the affiliated hospitals, with those set forth in Respondent's employee handbook and in the June 16 benefits enclosure and the testimony of Harry Joel discloses the following changes in the former Children's Hospital registered nurses' terms and conditions of employment. Initially, according to Joel, as the salaries received by registered nurses, who worked for Children's Hospital, were approximately 13 percent less than the salaries received by registered nurses, who worked for Pacific Presbyterian, Respondent increased the salaries of the California campus nurses by 13 percent[11] in order to equalize registered nurses' salaries. With regard to fringe benefits, while the former Children's Hospital registered nurses' contractual retirement plan was a ''money purchase plan,'' which was funded into Wells Fargo Bank, Respondent's retirement plan gave all registered nurses a choice between two plans, both of which differed from the contractual retirement plan. As to health insurance, the contractual health insurance plan offered the former Children's Hospital registered nurses a choice of two plans, an HMO and a self-insured health bene-

[9] The record establishes that Respondent did recognize and offer to bargain with five separate labor organizations (Hospital and Health Care Workers, Local 259; Paper and Paper Hangers Union, Local 4; Stationary Engineers, Local 39; Teamsters Automotive Employees Union, Local 665; and Hotel and Restaurant Employees & Bartenders Union, Local 2) as the bargaining representatives for different units of employees, encompassing both campuses. Recognition was extended inasmuch as there was no situation of a larger group of unrepresented employees on one campus.

[10] Harry Joel testified, and there is no dispute, that the effect of Respondent's unilateral changes was to ensure that all of Respondent's registered nurses were paid the same salary for the same steps and received the same fringe benefits.

[11] Inasmuch as the former Pacific Presbyterian registered nurses received an annual wage adjustment in July of each year, the actual salary increase received by the former Children's Hospital registered nurses was 17 percent, which included a 4-percent wage adjustment.

fit plan. In contrast, Respondent's health insurance plan gave registered nurses a choice of a third plan, increased the benefits available in the self-insured plan, and provided increased dental insurance. Next, the expired collective-bargaining agreement established separate vacation, sick leave, and holiday provisions for the former Children's Hospital registered nurses. According to Harry Joel, Respondent consolidated these separate plans into one ''paid time off/extended illness bank plan,'' pursuant to which registered nurses retained the same total number of paid time off days but accrued them into a paid time off (PTO) bank, which would enable a registered nurse to use the time off for whatever purpose he or she desired. Further, while there existed contractual life insurance and disability insurance plans for the former Children's Hospital registered nurses, Respondent instituted a ''flexible benefits plan,'' which provided for increased long-term disability and life insurance coverage and a health benefit spending account, which, according to Joel ''is pre-tax dollars that can be used for out-of-pocket expenses that may be incurred for health-related treatments.'' In addition to the foregoing, other unilateral changes in the former Children's Hospital nurses' contractual terms and conditions of employment, which were implemented by Respondent at the time of the consolidation of operations, included establishing Martin Luther King's Birthday as a paid holiday and eliminating the nurse's birthday as a paid holiday, limiting the amount of paid jury duty time to a maximum of 80 hours, increasing weekend differential pay by $3 per hour, and eliminating the requirement of having to complete 90 days of employment in order to become eligible for an educational leave of absence.[12] Also, rather than determining seniority among just the California campus registered nurses, Respondent implemented a combined seniority list encompassing the registered nurses on both campuses, and, by withdrawing recognition from CNA, Respondent eliminated the contractual grievance and arbitration procedure and the provision permitting access by CNA to the California campus bulletin boards.

Notwithstanding Respondent's above-described effort to establish the same terms and conditions of employment for the registered nurses on both campuses, Ida Cicci, Mary Ellen Hibbard, Barbara Pirzadeh, Lianne Lacorte, Kristen Ostrem, and Margaret Langham, who were employed by Children's Hospital as registered nurses and continued to work for Respondent at the California campus, each testified, without contradiction, that, in the 2-month period following the merger, she continued to perform the same job as prior to the merger and, in her department, there was no change either in her job duties or in her immediate supervision. Further, each testified, without contradiction, that she continued to order and obtain medicines from the basement pharmacy, located in the former Children's Hospital acute care facility, and that she continued to eat in the facility's cafeteria and park her car in the parking garage across the street. Likewise, registered nurse, Elizabeth Beach, who was employed by Pacific Presbyterian and continued to work for Respondent at the Pacific campus, testified, without contradiction, that, in the 2-month period following the merger, she continued in the same position as she held prior to the merger and there were no changes either in her job duties or her immediate supervision. Beach added that she continued to eat meals in the former Pacific Presbyterian facility's cafeteria and to park her car in the adjacent parking garage. Finally, when asked to describe any changes in the daily work activities of the former Children's Hospital registered nurses as a result of the merger, Penny Holland, Respondent's vice president for nursing, was able only to mention their opportunity to work on the Pacific campus when a low census existed on the California campus, and ''as far as nursing care delivery . . . there are certain dictums that every nurse has to do. And that still continues on both campuses.''

With regard to the supervisorial hierarchy and functions within Respondent's nursing department subsequent to the merger, the record establishes that, as the vice president for nursing,[13] Penny Holland is responsible for administering all aspects of nursing including hiring, firing, policies, and procedures. As do all of Respondent's vice presidents, Holland has cross-campus responsibility, and she maintains an office on both campuses. The six directors of nursing, who also have cross-campus responsibility, are beneath Holland within the nursing department and report directly to her. They are the director of nursing for surgical services, who is responsible for surgical services, ambulatory, recovery and the GI laboratory on both campuses; the director of nursing for critical care, who is responsible for the adult critical care units on both campuses; the director of nursing for the medical surgical unit, who is responsible for ontology, orthopedics, and similar departments on both campuses; the director of nursing for maternal and infant services, who is responsible for obstetrics and labor delivery on both campuses; the director of nursing for administration, who is responsible for staffing and other administrative activities on both campuses; and the director of nursing for support services, who is responsible for the float pool and house supervisors on each campus. Reporting to the directors of nursing are the nurse directors,[14] who have 24-hour responsibility, in their particular areas at the campus in which they work, and are usually in charge of nurses in one or more units. Depending upon the size of the particular units and the complexity of the work, directly beneath the nurse directors and responsible to them are the nurse managers. According to Holland, Respondent employs few individuals in this supervisorial classification and, where utilized, they have 24-hour responsibility for their departments. Finally, immediate supervision is provided by unit supervisors, who have single shift responsibility in their units and, depending on the size of the unit and complexity of the work, report either to a nurse manager or a nurse director. Finally, with regard to the nursing supervisorial structure and hierarchy, Holland corroborated the employee witnesses that immediate nursing supervision at the California campus was unchanged after the merger, and it appears that

[12] Counsel for the General Counsel contends that the bereavement leave provision of the expired collective-bargaining agreement was changed by Respondent to deny such in the case of the death of an in-law. Review of the employee handbook discloses no such change.

[13] As stated above, Holland is one of Respondent's 12 vice presidents, each of whom is in charge of a particular aspect of Respondent's operation. According to Harry Joel, the ''majority'' have offices on both campuses and alternate daily between the two offices.

[14] For example, as stated above, Paula Quinn in the director of nursing for maternal and infant services. Reporting directly to her are Sheila Szentmiklossy, who is the nurse director responsible for labor and delivery on the California campus, and Heather Otanez, who holds the identical position on the Pacific campus.

Respondent's nursing supervisorial structure is identical for each campus and that the nurse managers and unit supervisors are site specific.

As stated above, since the merger became effective, Respondent has consolidated and centralized most employee-related functions. Specifically as to the nursing department, nurse in-service training is centralized and one individual oversees all such activities. In this regard, training sessions are publicized in the hospital newsletter, which is distributed on both campuses, and, no matter on which campus the training sessions are held, nurses from both campuses are invited. Also, the hiring process is centralized. Thus, recruiting is accomplished through advertising which is not site specific; applicants for available registered nurse positions may apply for any position at the administrative office on either campus and be interviewed by a nurse director, who decides whether or not the individual should be hired. Thereafter, the newly hired registered nurse goes through a standardized orientation program. Further, the medical center maintains listings of nurses with advanced degrees, who are specialists in particular areas. The in-house telephone directory contains listings for these individuals, and, according to Holland, ''they also work on both campuses; they're not campus-specific. So the ontology nurse specialist serves both areas . . . things of that nature.'' Furthermore, the nursing administrative procedures manual and the nursing clinical procedures manual are distributed to all of Respondent's registered nurses, and all clinical forms are the same for both campuses. While the foregoing evidences Respondent's effort at consolidating the nursing functions, differences remain. Thus, individual nursing units, on both campuses, maintain procedural manuals, which contain policies specific to practice in that unit and which may predate the merger. Also, while approximately half of all patient charting, by the registered nurses at the Pacific campus, is done by computer, patient charting, by the California campus registered nurses, continues to be handwritten, and, while registered nurses on both campuses work 12-hour shifts, the methods of compensating them differ. Finally, turning to the matter of contacts among and interchange between the California campus registered nurses and the Pacific campus registered nurses, the record establishes that, during the initial 2 months after the merger, contacts between registered nurses at the California and Pacific campuses were virtually nonexistent. Thus, while Margaret Langham recalled working with a Pacific campus registered nurse for 1 day during that time period the other former Children's Hospital registered nurses Cicci, Hibbard, Pirzadeh, Lacorte, and Ostrem each denied working with any Pacific campus registered nurses during those 2 months and Pacific campus registered nurse Beach likewise denied any contacts. However, although the record is not clear when this program commenced, nurse forums, during which delegates from both campuses, who are chosen by each nursing unit, meet and discuss nursing ideas on an informal basis, are held on a biweekly basis. Also, several of the registered nurse witnesses testified that Respondent has instituted a cross-training program and a voluntary program pursuant to which, when jobs are available, registered nurses may request to work on the other campus on low census days at their own campus and that Pacific campus nurses have occasionally worked at the California campus. Asked how often nurses are made aware of openings on the other campus, Penny Holland testified, ''Every day, every shift, the staffing offices are in communication.'' She added that, in lieu of hiring registry nurses, Respondent prefers such cross-campus shifting when comparable departments are involved. Asked how many staff registered nurses have worked shifts on the other campus, Holland stated, ''over a hundred nurses . . . have gone back and forth.'' During cross-examination, Holland qualified her testimony, stating that the estimated 100 nurses includes registered nurses ''who have oriented or crossed both campuses.'' Asked how many of the hundred actually worked on the other campus, Holland said, ''I don't have that number in my head, no.'' In addition, Respondent maintains a float pool, which, according to Holland, is comprised of ''nurses who are [specially] trained to float throughout various areas within the organization. They're not unit specific.'' She added that ''census'' and ''scheduling'' dictate where these nurses will be used and that some are specialists and others are generalists who have ''extensive experience to go throughout the hospital.'' Holland estimated that there are ''nearly a hundred'' float nurses but presented no evidence as to how often said individuals were used or over what time period. Moreover, in this regard, Nancy Cotton, the director of surgical services in the nursing department, testified that her department utilizes 189 registered nurses, with the number evenly divided between the two campuses; that her department has ''developed a cross-training program in which we have offered the nurses the opportunity to work on the other campus when the census allows;'' that 18 registered nurses have worked on the other campus and 56 have toured the surgical areas of the other campus; and that three nurses have applied and been permitted to permanently transfer to the other campus. As with the float pool nurses, Respondent offered no evidence as to the number of hours or days involved in these assignments or their frequency. Finally, while the record establishes that expensive surgical equipment has been transferred between campuses, Cotton testified that the transfer of equipment is not unusual and that ''most hospitals in the city borrow from each other because we cannot all afford to own the same sets.''

### B. *Analysis*

Initially, with regard to Respondent's withdrawal of recognition from CNA as the bargaining representative of the staff registered nurses at its California campus (the former Children's Hospital nurses) and Respondent's unilateral changes in the said registered nurses' terms and conditions of employment, the complaint alleges that said acts and conduct were violative of Section 8(a)(1) and (5) of the Act. Clearly, the legality of the foregoing conduct is dependent on Respondent's alleged obligation, subsequent to June 16, to recognize and bargain with CNA as the bargaining representative of the former Children's Hospital registered nurses. There is no dispute that Respondent's above obligation is, in turn, dependent on the nature of the so-called merger between Children's Hospital and Pacific Presbyterian and the creation of Respondent and upon whether or not a bargaining unit, limited to the registered nurses, who are employed by Respondent at its California campus, is appropriate for purposes of collective bargaining. As to the transaction, underlying the consolidation of the above two hospitals and the formation of Respondent, counsel for the General Counsel alternatively argues that Respondent is ''simply'' a renamed cor-

poration and is the ''continuing existence'' of Children's Hospital or, if, as Respondent asserts, California Pacific Medical Center is an entirely new entity, ''a 50-50 merger'' of the assets of Children's Hospital and Pacific Presbyterian, it ''is at least a legal successor to Children's Hospital because the ''employing enterprise'' remained unchanged.'' Under either theory, counsel for the General Counsel argues, Respondent remained under a continuing obligation to recognize and bargain with CNA if the former Children's Hospital nurses remained an appropriate unit for bargaining.

Counsel for the General Counsel seems to place his emphasis on the initial alternative, and, based on the record as a whole,[15] I agree that such appears to be the proper analysis of the creation of Respondent and that, as argued by counsel, the instant transaction appears to be akin to that of a stock transfer.[16] As to this, the June 16 agreement of merger states that Pacific Presbyterian shall be merged into Children's Hospital with the latter being the surviving corporation; that, upon the merger, the articles of incorporation of Children's Hospital shall be amended, changing its name to California Pacific Medical Center; that, upon the merger, the separate existence of Pacific Presbyterian shall cease; and that Respondent, the renamed Children's Hospital, shall succeed to all the rights and property of Pacific Presbyterian and all its debts and liabilities. Thus, while Respondent describes the foregoing as the creation of a new employing entity, in reality, what appears to have occurred is ''simply'' a corporate name change from Children's Hospital to that of Respondent and, without any alteration in the existing structure of the corporation, a transaction, termed a merger, which increased the existing corporation's assets and liabilities. There is no record evidence of any exchange or transfer of any outstanding ownership shares; however, as in the circumstances of a stock transfer, the transaction, between Children's Hospital and Pacific Presbyterian preserved the continuing existence of the former as a corporation, albeit under a different name, and, most significantly, as the employing entity. *Rockwood Energy & Mineral Corp.*, 299 NLRB 1136, 1139 (1990), enfd. 942 F.2d 169 (3d Cir. 1991); *Hendricks-Miller Typographic Co.*, supra. Moreover, the essential inquiry, in these types of cases, is whether operations, as they impinged on bargaining unit members, remained essentially the same after the transfer of ownership. *Phil Wall & Sons Distributing*, 287 NLRB 1161 at fn. 1, 1165 (1988). Herein, as in a true stock transfer situation, there was no hiatus in operations, and, on the day following the merger, what was renamed as Respondent's California campus continued to operate as a separate full service acute care medical facility in the same buildings as prior to the merger, utilizing the same equipment and offering the same services with the same personnel and immediate supervision. Id. at 1165. In the foregoing circumstances, I reiterate my agreement with counsel for the General Counsel that the transaction, underlying the consolidation of Children's Hospital and Pacific Presbyterian, was akin to that of a stock transfer.

The significance of the above conclusion to the issues herein is clear. Thus, the Board has long held ''that the 'mere change of stock ownership does not absolve a continuing corporation of responsibility under the Act.''' *Rockwood Energy Corp.*, supra; *Miller Trucking Services*, 176 NLRB 556 (1969). In particular, when a stock transfer occurs and the entity's employees are represented by a labor organization, the new owner ''may not decline to recognize and bargain with the [said labor organization] in the appropriate unit.'' If the stock transfer occurs during the life of a collective-bargaining agreement and the new owner has knowledge and acquiesces in the contract, said new owner is bound by its terms and conditions; and, if the stock transfer occurs after the expiration of a collective-bargaining agreement, the new owner is obligated to continue to recognize and bargain with the labor organization in an appropriate unit and to ''maintain the terms and conditions of employment [the entity] established . . . without unilateral change after the agreement expired.'' *Rockwood Energy Corp.*, supra; *Phil Wall & Sons*, supra; *Hendricks-Miller Typographic Co.*, supra; *Towne Plaza Hotel*, 258 NLRB 69, 76 (1981); *Western Boot & Shoe*, 205 NLRB 999 (1973). I have concluded that the facts herein establish that the creation of Respondent was akin to a stock transfer. Clearly, if such a transaction had occurred, Respondent's bargaining obligation would be manifest, and I find merit in the contention that, in the circumstances of this case, where only the corporate name has been changed and, in all other respects, just as in a true stock transfer, the corporation continues to exist, the same obligations, on the expiration of a collective-bargaining agreement, to recognize and bargain with a union and to refrain from engaging in unilateral changes, exist. While insisting that a new entity resulted from the merger of the two hospitals, Respondent[17] excused and rationalized the retention of the Children's Hospital corporate structure as being necessary to take advantage of the latter's pre-existing tax exempt status as a charitable institution; however, it is clear that an employer may not justify gaining tax advantages by asserting its continued viability while, at the same time, denying its contin-

[15] Although Gale Mondry asserted that the transaction between Children's Hospital and Pacific Presbyterian, creating Respondent, was neither a takeover or a purchase but rather a ''50-50'' merging of assets and the forming of a new entity, Respondent offered no corroborative evidence that such, in fact, occurred. Accordingly, I shall rely on the two hospitals' June 16, 1991 agreement of merger, executed by the chief executive officers of both hospitals, as the best evidence of what occurred.

[16] As explained by the Board in *Hendricks-Miller Typographic Co.*, 240 NLRB 1082 (1979), the concept of successorship contemplates ''the substitution of one employer for another, where the predecessor employer either terminates its existence or otherwise ceases to have any relationship to the ongoing operation of the successor employer.'' Id. at 1083 fn. 4. Put another way, a ''break'' or ''hiatus'' between two legal entities occurs. On the other hand, ''the stock transfer differs significantly, in its genesis, from the successorship, for the stock transfer involves no break or hiatus between two legal entities, but is, rather, the continuing existence of a legal entity, albeit under new ownership.'' Id. According to the Board, the proper starting point for an analyzing a transaction is the following question: ''. . . did the two entities in question cease to have any relation, one to another, or did ownership of the initial entity merely pass into new hands?'' Id. Herein, as no hiatus between ownership entities or operations occurred, I find that the instant circumstances do not involve the concept of successorship.

[17] Respondent relies on *Myers Custom Products*, 278 NLRB 636 (1986), as support for its argument against the General Counsel's ''sale of assets'' theory. However, said case concerned whether a ''legal successor'' was obligated to recognize and bargain with a union and is, therefore, inapposite.

ued existence in order to evade its obligations to employees under the Act. *Food & Commercial Workers v. NLRB*, 768 F.2d 1463, 1471 (D.C. Cir. 1985); *Miami Foundry Corp. v. NLRB*, 682 F.2d 587, 589 (6th Cir. 1982). Based on the foregoing, and the record as a whole, I believe that Respondent continued to owe a bargaining obligation to the former Children's Hospital registered nurses at its renamed California campus as long as said employees continued to constitute an appropriate unit.[18]

Counsel for the General Counsel argues that the bargaining unit, for which CNA was the representative for purposes of collective bargaining prior to the merger, the former Children's Hospital staff registered nurses, all of whom were immediately offered employment by Respondent at its California campus on the effective date of the merger, continues to constitute a separate appropriate unit after the merger; while Respondent seeks a finding that the only appropriate unit, subsequent to the merger, encompasses all of its registered nurses on its California and Pacific campuses.[19] At the outset, in this regard, it must be noted that Section 9(a) of the Act requires that, in order to be designated as a group of employees' exclusive representative for purposes of collective bargaining, a labor organization must be selected, as such, by a majority of the employees in an appropriate unit and that ''there is nothing in the [Act] which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit; the Act requires only that the unit be ''appropriate.'' *NLRB v. Great Western Produce*, 839 F.2d 555, 557 (9th Cir. 1988); *Capital Bakers*, 168 NLRB 904, 905 (1967); *Parsons Investment Co.*, 152 NLRB 192, 193 at fn. 1 (1965). Also, ''the fact that one unit is appropriate does not necessarily mean that all other units are inappropriate.'' *NLRB v. Zayre Corp*., 424 F.2d 1159, 1165 (5th Cir. 1970). Finally, on this point, the Board has long held, in the industrial context and with retail merchandising chains, that a single facility unit, geographically separated from other facilities operated by the same employer, is presumptively appropriate for the purposes of collective bargaining even if a broader unit might also be appropriate. *Haag Drug Co*., 169 NLRB 877 (1968); *Capital Bakers*, supra; *Dixie Belle Mills*, 139 NLRB 629 (1962).

In urging that I find that a unit of staff registered nurses, limited to those employed by Respondent on the California campus, is appropriate herein, counsel for the General Counsel relies on *Manor Healthcare Corp*., 285 NLRB 224 (1987), in which the Board extended the single facility presumption to the health care industry. Id. at 226. However, said presumption is a rebuttable one, requiring the party opposing such a unit to do so ''by a showing of circumstances that militate against its appropriateness, including an increased risk of work disruption or other adverse consequences.'' Id. Further, the Board indicated that it would continue to weigh the ''traditional factors,'' normally utilized in unit determination cases, to determine if the presumption has been overcome. Id. at 228. In a subsequent decision, the Board enumerated these as including geographic proximity, employee interchange and transfer, functional integration, administrative centralization, common supervision, and bargaining history. *West Jersey Health System*, 293 NLRB 749, 751 (1989). Further, noting that the instant matter did not arise in the unit determination context and as, in successorship cases, I believe that Respondent herein had the burden of establishing that the consolidation and centralization of functions and other changes in employees' terms and conditions of employment ''had destroyed the identity of the existing unit'' so as to render it no longer an appropriate unit. *Zayre Corp*., supra.

In arguing that it has been under no obligation to recognize and bargain with CNA as the collective-bargaining representative of the California campus staff registered nurses inasmuch as the only appropriate unit is one encompassing its entire complement of staff registered nurses on both campuses, Respondent's counsel argue, and the record establishes, that the California campus and the Pacific campus are located no more than a mile from each other; that, subsequent to the merger, Respondent has centralized management over the entire medical center, including the nursing department, with 12 vice presidents and approximately 100 department directors, each of whom has cross-campus responsibility; that all personnel and labor relations functions, including hiring and firing, are centralized in one human resources department; and that all registered nurses on both campuses, as are all other employees, are covered by uniform policies, working guidelines, wages, and benefits.[20] Moreover, the float pool of registered nurses work on both campuses; job openings are posted on both campuses; and, during meetings of the nurse forums, registered nurses from both campuses attend. In addition, the record establishes, and counsel points out, that, subsequent to the merger, Respondent has held itself out to the public as constituting a single entity, with neither the California campus nor the Pacific campus having a separate identity. Thus, besides centralized management, with one board of directors and one corporate bylaws; all physicians have reciprocal admitting privileges; there is some sharing of equipment; all signs, stationery, forms, and other business documents display Respondent's logo; and all advertising for available positions is employer wide.[21]

[18] Board law, in cases involving true transfers of stock and clear successorship issues, appears to be that an employer's bargaining obligation is to recognize and bargain with its employees' bargaining representative so long as the bargaining unit remained an appropriate one. *NLRB v. Burns Security Services*., 406 U.S. 272, 280–281 (1972); *Hendricks-Miller Typographic Co*., supra. Clearly, the same must hold true herein.

[19] Respondent does not contend that a unit, limited in scope to registered nurses, is not appropriate for purposes of collective bargaining, and, utilizing its rule making authority, the Board has recently ruled that a unit, encompassing all registered nurses at an acute care facility, is an appropriate unit.

[20] I mention the common wages and benefits but note that the institution of these is alleged as an unfair labor practice by the General Counsel, and, in such circumstances, believe that such can not be a significant factor supporting the appropriateness of the employer-wide unit. *Armco, Inc. v. NLRB*, 832 F.2d 357, 363 (6th Cir. 1987).

[21] Besides *West Jersey Health System*, supra, Respondent placed great reliance on *Presbyterian/St. Luke's Medical Center*, 289 NLRB 249 (1988), as support for its contention that the only appropriate unit is one encompassing all its registered nurses. I believe that reliance upon this latter decision is misplaced. Thus, the Board itself noted that, inasmuch as it was acting pursuant to a remand order from the United States Court of Appeals for the Tenth Circuit, it did not apply the presumption favoring a single unit facility to the facts of that case. *Presbyterian/St. Luke's*, supra at 251 fn. 5. Accordingly, it is inapposite to the instant matter.

Notwithstanding the foregoing, in the circumstances of this matter, I do not believe that the bargaining unit, limited to the staff registered nurses working at Respondent's California campus, has lost its identity as a separate appropriate unit. Initially, in this regard, I stress the significance of the rebuttable presumption of single-facility appropriateness in the health care industry, and the lack herein of any record evidence, demonstrating any increased risk of work disruption or other adverse consequences caused by union representation in a less than employer wide bargaining unit. To the contrary, the only record evidence herein is that, from the date of the merger, through the time of the hearing, and into the foreseeable future,[22] Respondent's California campus, the former Children's Hospital, has been, and will continue to be, a full service acute care medical facility and that it and Respondent's Pacific campus, the former Pacific Presbyterian, offer to the public independent, complete patient care and almost entirely duplicative services. Further, the record is utterly devoid of evidence that the California campus and the Pacific campus share nonduplicative services or that the California campus provides any service for Pacific campus patients. Put succinctly, there is no record evidence of any risk that a work stoppage at the California campus will seriously disrupt Respondent's overall operations. *Manor Healthcare,* supra at 228.

Turning to consideration of some of the ''traditional'' criteria, utilized in determining the appropriateness of a bargaining unit, in my view, the most significant of these, in the instant factual context, is the long history of collective bargaining for the registered nurses at the California campus. Thus, while the former Pacific Presbyterian registered nurses apparently had never been represented for purposes of collective bargaining, the record evidence establishes that CNA had acted as the bargaining representative for a separate unit encompassing the former Children's Hospital registered nurses since, at least, 1947. Both the Board and the courts have long recognized not only that the traditional factors, which tend to support the finding of a larger or single unit as being appropriate, are of ''lesser cogency where a history of meaningful bargaining has developed'' but also that ''this fact alone suggests the appropriateness of a separate bargaining unit'' and that ''compelling circumstances'' are required to overcome the significance of bargaining history. *Armco, Inc*., supra at 363; *Gibbs & Cox, Inc*., 280 NLRB 953, 954 (1986); *Marion Power Shovel Co.*, 230 NLRB 576, 579 (1977). For example, in *Marion Power Shovel*, supra, notwithstanding the existence of various factors militating toward a single production and maintenance unit, inasmuch as the record evidenced a long bargaining history in a separate machinists unit, the Board disregarded all other factors and found the separate unit appropriate. Id. at 579. From the foregoing, it is apparent that, in appropriate unit determination cases, the Board is reluctant to ignore or disparage a developed bargaining relationship, and, other than the usual panoply of factors in such cases, Respondent has failed to present any ''compelling'' reason for doing so in this matter. Besides the collective-bargaining history between the renamed Children's Hospital and CNA, although of lesser significance, in the instant circumstances, than bargaining history, the lack of meaningful interchange between nurses on the two campuses must be emphasized. Thus, taking into account the testimony of the registered nurses, who testified on behalf of the General Counsel, almost no interchange occurred during the initial 2 months after the merger. Further, although Penny Holland averred that, at least, 100 nurses had either been cross-trained or actually worked at the other campus on low census days, she could give no more specific information as to how many actually worked on the other campus, and Respondent failed to offer any corroborating records. Also, while Nancy Cotton stated that 18 operating room registered nurses had performed work at the other campus and that three nurses had permanently transferred from one campus to the other, Respondent offered no evidence as to the number of hours or days involved, and the number of permanent transfers appears to be minuscule considering the more than 1400 staff registered nurses employed by Respondent.

Although in *West Jersey Health System*, supra, the main decision relied on by Respondent, the Board found a single facility unit inappropriate notwithstanding the single facility presumption, said decision is readily distinguishable from the instant factual matrix. Thus, in that decision, not only was there no evidence of any bargaining history in the single facility unit but also there was record evidence of a potential for adverse consequences resulting from a labor disruption involving the single facility unit. Id. at 751. Herein, of course, the opposite is true in both instances. Moreover, in *West Jersey Health System*, unlike herein, ''there ha[d] been a significant degree of permanent transfers of employees among divisions, as well as a steady temporary interchange of employees.'' Id. Accordingly, notwithstanding factors indicating centralization and standardization subsequent to the merger, noting that, as each campus of Respondent remained a full-service acute care medical facility and as both continue to offer largely duplicative health care, the probability of a disruption of services caused by labor problems involving the single facility registered nurses unit is nil, that CNA and Children's Hospital had a longstanding collective-bargaining history, in a unit encompassing only its registered nurses, dating back to 1947, that there is little employee interchange between the California and Pacific campuses, and that the merger brought about no change in the daily work activities of the former Children's Hospital registered nurses, who continue to perform the same jobs and to have the same immediate supervision and utilize the same California campus facilities as before the merger, I believe the record, as a whole, warrants the conclusions that the Board's presumption of single-facility appropriateness has not been rebutted herein and that Respondent's staff registered nurses at its California campus (the former Children's Hospital registered nurses) remained an appropriate unit subsequent to the June 16 merger. *Armco, Inc*., supra.

I have concluded that the transaction, between Children's Hospital and Pacific Presbyterian, underlying the creation of Respondent, was akin to that of a stock transfer; that, as a result of the transaction, Respondent's obligation to bargain with CNA continued if the former Children's Hospital registered nurses continued to comprise an appropriate unit; and

[22] Vice president of nursing, Penny Holland, did vaguely testify that there were plans to end the duplicity of services some time in the future; however, the Board has long held that such ''speculative'' testimony is hardly ''a basis upon which the Respondent could lawfully refuse to bargain with the Union.'' *Rosehill Cemetery Assn.*, 281 NLRB 425, 426 at fn. 4 (1986).

that, in fact, said bargaining unit continued to be appropriate for purposes of collective bargaining. Accordingly, I find that, subsequent to June 16, 1991, Respondent was under an obligation to continue to recognize and bargain with CNA as the bargaining representative of the staff registered nurses at its California campus (*Rockwood Energy Corp*., supra; *Towne Plaza Hotel*, supra) and that, therefore, by its letter, dated June 16, withdrawing such recognition from CNA, Respondent engaged in conduct violative of Section 8(a)(1) and (5) of the Act. *Armco, Inc*., 279 NLRB 1184 (1986); *Twin City Trucking*, 259 NLRB 576 (1981). Moreover, there is no dispute that, having withdrawn recognition from CNA, Respondent failed to offer to bargain with said labor organization prior to instituting changes in the above employees' terms and conditions of employment and that said changes included a 17 percent wage increase, additional retirement plan and health insurance plan choices, a paid time off/extended illness bank plan, a flexible benefits plan to cover out-of-pocket medical and related expenses, an additional paid holiday, limited jury duty paid time off, increased weekend differential pay, elimination of the eligibility requirement for paid education leave, and combining the California campus and Pacific campus seniority lists. Inasmuch as it was obligated to have offered CNA an opportunity to bargain prior to implementing said changes in the former Children's Hospital registered nurses' terms and conditions of employment, Respondent's disregard of its bargaining obligation and unilateral acts and conduct were violative of Section 8(a)(1) and (5) of the Act. *NLRB v. Katz*, 369 U.S. 736 (1962); *Rockwood Energy Corp*., supra.

Turning next to the complaint allegations that, prior to and during the bargaining between Children's Hospital and CNA for a successor collective-bargaining agreement, covering the former's registered nurses, Children's Hospital engaged in conduct violative of Section 8(a)(1) and (5) of the Act by failing and refusing to provide to CNA a copy of the 1990 merger agreement between the parent corporations of Children's Hospital and Pacific Presbyterian and Children's Hospital's 1989 and 1990 operating budgets and by failing and refusing to bargain with CNA over the effects of the proposed merger upon the registered nurses. Initially, with regard to the information requests, there is no dispute that, by letter dated January 31, CNA requested a copy of the 1990 merger agreement as it believed that the nurses might be adversely impacted depending on the nature of the hospitals' transaction; that Respondent refused to comply as it believed the agreement was ''confidential'' and the request was ''premature and legally unfounded''; that, by letter dated March 19, CNA requested the budget documents in order to gain an ''overall'' picture of the hospital's finances prior to bargaining; and that Respondent denied the latter request. That ''there can be no question of the general obligation of an employer to provide information that is needed by the bargaining representative for the proper performance of its duties'' has been a longstanding principle of the law of Section 8(a)(1) and (5) of the Act. *NLRB v. Acme Industrial Co*., 385 U.S. 432, 435, 436 (1967). An employer's obligation, in this regard, includes the duty to provide information necessary for the administration and policing of an existing collective-bargaining agreement. Id. at 435–438. The only issue that may be raised relates to the relevancy of the requested information to the bargaining representative's performance of its duties, and certain types of information, including employees' names, addresses, dates of hire, rates of pay, and job classifications, are considered to be ''intrinsic to the core of the employer-employee relationship'' and, therefore, presumptively relevant. *San Diego Newspaper Guild v. NLRB*, 548 F.2d 863, 867 (9th Cir. 1977); *Georgetown Holiday Inn*, 235 NLRB 485–486 (1978). As to such information, the requesting labor organization need not show the precise relevancy, and the employer has the burden of showing lack of relevance. For other types of information, while the requesting labor organization must demonstrate the relevance of the information sought, the standard of relevancy in such circumstances is a ''liberal discovery-type standard,'' requiring only that there exist ''a probability such data is relevant and will be of use to the union in fulfilling its statutory duties and responsibilities.'' *Acme Industrial*, supra at 437; *Loral Electronic Systems*, 253 NLRB 851, 853 (1980); *Associated General Contractors of California*, 242 NLRB 891, 893 (1979). The types of information, at issue herein, did not involve employees' terms and conditions of employment; therefore, there is no presumption of relevancy, and CNA was required to demonstrate such. As to the requested merger document, the record establishes that CNA was concerned with the potential impact of the merger on the bargaining unit, and, in *Mary Thompson Hospital*, 296 NLRB 1245 (1989), the Board found similar affiliation information relevant to collective bargaining. Id. at 1250. Although Respondent argues that any merger information would have been premature as governmental agencies had not yet indicated their approval of the merger, the facts remain that bargaining was scheduled to commence with or without merger approval; that the merger undoubtedly would have been an issue; and that, as the agreement itself was the defined expression of the hospital's desires and methodology for attaining them, its terms, as such impacted upon the bargaining unit employees, clearly would have influenced CNA as to negotiating tactics, positions, and demands. Accordingly, Children's Hospital engaged in conduct violative of Section 8(a)(1) and (5) of the Act by failing and refusing to accede to CNA's request for the merger document. *Mary Thompson Hospital*, supra. However, a different result is required with regard to the 1990 and 1991 Children's Hospital budget documents. While it is asserted that the budget documents were necessary to enable CNA to obtain an accurate view of the hospital's financial condition prior to bargaining, there is no record evidence that Children's Hospital had ever indicated that it would reject any of CNA's wage or fringe benefit proposals based upon inability to afford them or that CNA had any reason to believe that the hospital would raise financial problems as an issue during the bargaining. Rather, it appears that CNA was merely seeking information to help it formulate proposals; however, what is of help to a labor organization does not define an employer's obligation to provide information. *Warner Press*, 301 NLRB 1161 (1991). Absent any indication that Children's Hospital would raise its financial condition during bargaining, I do not believe it was under any obligation to provide budget information to CNA. Id. Accordingly, I shall recommend dismissal of the applicable paragraph of the instant complaint.

The final allegation of the complaint concerns Children's Hospital's asserted refusal, since May 22, to bargain over the effects of the proposed merger with Pacific Presbyterian. As

to this, I was not impressed with the testimonial demeanor of Willard Hatch, who was internally inconsistent and contradictory and seemed to be dissembling on this point. In particular, I found incredible Hatch's assertion that, in response to his reiteration of the aforementioned information requests, Laurence Arnold nonresponsively said that he would not bargain over the effects of the merger until it occurred. Likewise, I can not credit the testimony of Lois Roth, who directly contradicted Hatch as to whether the latter specifically demanded that Arnold bargain over the effects of the merger. Further, as nothing contained in CNA's contract proposals to Children's Hospital evidences effects bargaining, I find that, at all times during the bargaining, CNA's intent was to negotiate a successor collective-bargaining agreement with the hospital. Accordingly, I shall credit Laurence Arnold's denial that he ever refused to bargain over the effects of the merger and shall recommend dismissal of the applicable paragraph of the complaint.

## CONCLUSIONS OF LAW

1. At all times, until June 16, 1991, Children's Hospital was an employer engaged in commerce and in a business affecting commerce and a health care institution within the meaning of Section 2(2), (6), (7), and (14) of the Act.

2. At all times, until June 16, 1991, Pacific Presbyterian was an employer engaged in commerce and in a business affecting commerce and a health care institution within the meaning of Section 2(2), (6), (7), and (14) of the Act.

3. At all times, subsequent to June 16, 1991, Respondent has been an employer engaged in commerce and in a business affecting commerce and a health care institution within the meaning of Section 2(2), (6), (7), and (14) of the Act.

4. CNA is a labor organization within the meaning of Section 2(5) of the Act.

5. By, since on or about February 5, 1991, failing and refusing to furnish to CNA a copy of the 1990 merger agreement, between the parent corporations of Pacific Presbyterian and itself, Children's Hospital engaged in conduct violative of Section 8(a)(1) and (5) of the Act.

6. All staff registered nurses employed by Respondent at its California campus; excluding all other employees, guards and supervisors as defined by the Act constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

7. At all times material herein, CNA has been the representative for purposes of collective bargaining of the employees in the appropriate unit described in paragraph 6 above.

8. By, on or about June 16, 1991, withdrawing recognition from CNA as the bargaining representative for the registered nurses employed at its California campus, Respondent engaged in conduct violative of Section 8(a)(1) and (5) of the Act.

9. By, on or about June 16, 1991, unilaterally, and without first notifying and affording CNA, as the bargaining representative of the registered nurses employed at its California campus, an opportunity to bargain, changing said employees' terms and conditions of employment, including, but not limited to, a 17 percent wage increase, additional retirement plan and health insurance plan options, a paid time off/extended illness bank plan, a flexible benefits plan to cover out-of-pocket medical and related expenses, an additional paid holiday, limited jury duty paid time off, increased weekend differential pay, elimination of the eligibility requirement for paid education leave and the contractual grievance and arbitration procedure, and combining the California and Pacific campus seniority lists, Respondent engaged in conduct violative of Section 8(a)(1) and (5) of the Act.

10. The unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

11. Unless specifically found herein, Respondent engaged in no other unfair labor practices.

## REMEDY

Having found that Respondent[23] has engaged in serious unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act, I shall recommend that it be ordered to cease and desist from engaging in any such conduct in the future and to take certain affirmative actions necessary to effectuate the purposes and policies of the Act. In this regard, I shall recommend that Respondent be ordered to extend recognition to CNA as the bargaining representative of its registered nurses at its California campus and to bargain collectively, in good faith, with said labor organization if the latter so requests. With regard to the numerous unilateral changes, implemented by Respondent on or immediately after June 16, 1991, the normal practice of the Board is to direct the employer to restore the status quo ante where such unilateral actions are to the detriment of the affected employees. Herein, while some of the unilateral acts appear to have been to the detriment of the California campus registered nurses, others obviously have been to their benefit. In such mixed situations, Board policy is quite clear, and, having considered counsel for Respondent's arguments in their post-hearing brief, I see no reason to depart from it. Accordingly, I shall recommend utilization of the formula set forth in *KXTV*, 139 NLRB 93 (1962); *Kendall College*, 228 NLRB 1083 (1977), and *Rockwood Energy Corp*., supra, and similar other cases—issuance of a recommended status quo ante restoration order conditioned upon the affirmative desires of the California campus registered nurses as expressed through their bargaining representative. With regard to the information request, as the so-called merger has already occurred and with the terms of such made public, it seems superfluous to require that Respondent furnish copies of the 1990 merger agreement to CNA. Accordingly, I shall recommend that Respondent be ordered to do so only upon a specific request from CNA. Finally, Respondent shall be required to post a notice, affirmatively setting forth its obligations.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[24]

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[23] Inasmuch as the transaction, underlying the creation of Respondent, appears to have encompassed merely the amending of Children's Hospital's articles of incorporation to change its name to that of Respondent and the increasing of the existing corporation's assets and liabilities, for purposes of remedying the former Children's Hospital's unfair labor practice and formulating the order herein, I shall consider Respondent to be the successor to Children's Hospital and to be responsible for its unfair labor practices.

[24] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be

*Continued*

## ORDER

The Respondent, Children's Hospital of San Francisco and California Pacific Medical Center, San Francisco, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to furnish to CNA with copies of the 1990 merger agreement between its parent corporation and that of Pacific Presbyterian;

(b) Withdrawing recognition from CNA as the representative for purposes of collective bargaining of its staff registered nurses at its California campus.

(c) Unilaterally, without notifying or affording CNA as the representative for purposes of collective bargaining of its staff registered nurses at its California campus an opportunity to bargain, changing various of the terms and conditions of employment of said registered nurses, including, but not limited to, their wages, health insurance, pension, vacations, holidays, sick leave, grievance procedure, differential pay, and seniority.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, upon request, bargain collectively, in good faith, with CNA, as the exclusive representative for purposes of collective bargaining in an appropriate unit, consisting of all staff registered nurses employed by Respondent on its California campus; excluding all other employees, guards and supervisors as defined by the Act, concerning rates of pay, wages, hours of employment, and other terms and conditions of employment.

(b) If CNA so desires, revoke and cease giving effect to the changes in the aforementioned employees' terms and conditions of employment, which were implemented on or immediately after June 16, 1991; and in the event of such revocation, make employees whole, with interest, for any losses may they may have suffered as a result of said changes.

(c) If CNA so desires, furnish it with copies of the 1990 merger agreement document.

(d) Post at its San Francisco, California facilities, including its California and Pacific campuses, copies of the attached notice marked ''Appendix.''[25] Copies of the notice, on forms furnished by the Regional Director of Region 20, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges that Respondent violated Section 8(a)(1) and (5) of the Act by failing and refusing to provide copies of Children's Hospital's 1990 and 1991 budgets and by refusing to bargain over the effects of a proposed merger.

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

Having found that we have committed serious unfair labor practices, the National Labor Relations Board has ordered that we undertake and abide by the promises contained in this notice.

WE WILL NOT fail and refuse to furnish to the California Nurses Association (CNA) copies of the 1990 merger agreement between our parent corporation and that of Pacific Presbyterian Medical Center.

WE WILL NOT withdraw recognition from CNA as the representative for purposes of collective bargaining of the following appropriate unit of our employees: all staff registered nurses employed at our California campus; excluding all other employees, guards, and supervisors as defined by the Act.

WE WILL NOT unilaterally, without notifying and affording CNA as the representative for purposes of collective bargaining of the staff registered nurses at our California campus, change various terms and conditions of employment of said employees, including, but not limited to, their wages, health insurance, pension, vacations, holidays, sick leave, and seniority.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

WE WILL recognize and, upon request, bargain collectively, in good faith, with CNA as the exclusive representative for purposes of collective bargaining of the above appropriate unit of our employees.

WE WILL, if CNA so desires, revoke and cease giving effect to any changes in the terms and conditions of employment of our staff registered nurses at our California campus which were implemented on or immediately after June 16, 1991, and, in the event of such revocation, WE WILL make employees whole, with interest, for any losses they may have suffered as a result of said changes.

WE WILL, if CNA so desires, furnish it with copies of the 1990 merger agreement between our parent corporation and that of Pacific Presbyterian Medical Center.

CALIFORNIA PACIFIC MEDICAL CENTER

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adopted by the Board and all objections to them shall be deemed waived for all purposes.

[25] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''